HARTA PACKAGING INDUSTRIES (MALACCA) SDN BHD

v.

CYMUN DEVELOPMENT SDN BHD

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[APPEAL NO: 1-12-7-2004]
8 SEPTEMBER 2004

CIVIL PROCEDURE: *Transfer - Transfer of case from Melaka Sessions Court to Ipoh Sessions Court - Whether cause of action occurred in Melaka where breach of contract took place - Whether defendant had place of business in Melaka where action was instituted - Whether sessions court judge erred in decision to transfer case to Ipoh Sessions Court - Subordinate Courts Act 1948, s. 2(1)(a), (b) - Courts of Judicature Act 1964, s. 23(1)(a)*

This was the plaintiff's appeal against the decision of the sessions court judge who transferred the plaintiff's civil action herein from the Melaka Sessions Court to the Ipoh Sessions Court. The defendant claimed that its principal office was at an address in Chemor, Perak. Its business dealings with the plaintiff for goods sold and delivered by the plaintiff to the defendant was at that address through which payments were made to the plaintiff in Melaka. Further its witnesses were working at that address. The plaintiff replied that in addition to the defendant's address in Chemor, Perak, the defendant also had a business address in Melaka. That was evidenced in the result of an official search in the Companies Commission of Malaysia. Although the goods the defendant ordered were delivered by the plaintiff in Melaka to Chemor, Perak, the order was made to the plaintiff by the defendant's office in Melaka.

The issue was whether the plaintiff satisfied para 2(1)(a) and (b) of the Third Schedule to the Subordinate Courts Act 1948 ('the Act').

Held (allowing the appeal):

[1] The accrual of a cause of action in contract cases is deemed to have occurred at the place where the breach took place. In a contract for the payment of money, the breach occurs when there is a failure to pay the sum promised. This is logical as the meaning of 'cause of

action' is the act on the part of the defendant which gives the plaintiff his cause of complaint. The failure to pay will be the cause of complaint. The breach will have to be the place where the payment is to be made and the cause of action will therefore accrue in that place. Where there is no agreement as to the place where the payment should be made, then the payment should be made at the place where the plaintiff lives dictum of learned judge in *Malacca Securities v. Loke Yu* (foll). (pp 717 e-g & 718 a)

[2] Since the defendant in Chemor, Perak had made payments to the plaintiff in Melaka for various prior business dealings between them, then the non-payment of the sum claimed by the plaintiff gave rise to the alleged breach in Melaka. That in turn gave the plaintiff the cause of complaint in Melaka. It followed that the cause of action arose in Melaka and that the plaintiff satisfied para 2(1)(a) of the Third Schedule to the Act. (p 718 c)

[3] The defendant's address in Chemor, Perak was one of the places of the defendant's business and the official search of the defendant's corporate profile in the Companies Commission of Malaysia showed that the defendant also had a place of business in Melaka. Therefore, the plaintiff satisfied para 2(1)(b) of the Third Schedule to the Act. (p 718 d-e)

Case(s) referred to:

Amanah Finance Malaysia Bhd v. Aura Vista Sdn Bhd & Ors [2000] 5 CLJ 229 HC ***(refd)***

American Express Bank Ltd v. Mohamed Toufic Al-Ozeir & Anor [1995] 1 CLJ 273 SC ***(refd)***

Bank Bumiputra Malaysia Bhd v. Melewar Holdings Sdn Bhd & Ors [1990] 1 CLJ 1246; [1990] 1 CLJ (Rep) 654 HC ***(refd)***

Cita Marine Sdn Bhd v. Progressive Insurance Bhd & Ors [2001] 6 CLJ 506 HC ***(refd)***

Cuban Atlantic Sugar Sales Corp v. Compania De Vapores San Elefterio Limitada [1960] 1 All ER 141 ***(refd)***

Jackson v. Spittall [1870] LR 5 CP 542 ***(refd)***

Malacca Securities Sdn Bhd v. Loke Yu [1998] 3 CLJ 22 HC ***(foll)***

Megarina Sdn Bhd v. Enersafe Sdn Bhd [2002] 5 CLJ 478 HC ***(refd)***

Northey Stone Co v. Gidney [1894] 1 QB 99 ***(refd)***

Rashidah Mohammad v. Mayban Finance Bhd [2003] 2 CLJ 542 HC ***(refd)***

RHB Bank Bhd v. Kawood Sdn Bhd & Ors And Another Suit [2002] 2 CLJ 387 HC ***(refd)***

Spiliada Maritime Corp v. Cansulex Ltd The Spiliada [1987] AC 460 ***(refd)***
Taman Rimba (Mentakab) Sdn Bhd v. Sin Jew Poh Tractor Works [2002] 5 MLJ 321 ***(refd)***
Tung Lian Enterprise v. Poly Trading Company [1993] 4 CLJ 189 HC ***(refd)***
Yap Thiam Choy v. Sykt Pembenaan Fajar Baru (Rembau) Sdn Bhd [2000] 4 CLJ 296 HC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 23(1)(a), (b)
Subordinate Courts Act 1948, ss. 59(2), 99A, para 2(1)(a), (b), (c), (d), (e) Third Schedule

For the plaintiff - Roger Lo Ming; M/s KJ Lo & Co
For the defendant - JS Lim; M/s Khong & Son

Reported by Usha Thiagarajah

JUDGMENT

Low Hop Bing J:

Appeal

This is an appeal by the plaintiff-appellant ("the plaintiff") against the decision of the learned sessions court judge ("the trial court") who had on 25 February 2004 ordered the transfer of the civil action herein from the Melaka Sessions Court to the Ipoh Sessions Court.

Factual Background

The defendant-respondent's ("the defendant's") affidavit in support of the application states, *inter alia*, that the defendant's principal office is at Lot 32674 Batu 3, Jalan Jelapang 31200 Chemor, Perak and, without admitting any liability, had business dealings with the plaintiff concerning goods sold and delivered by the plaintiff to the defendant in that address through which payments were made to the plaintiff in Melaka as a result of which he believed the Ipoh Sessions Court is to exercise jurisdiction in this civil action wherein the defendant's witnesses are working in the defendant's address.

The plaintiff's affidavit in reply averred that in addition to the defendant's address in Chemor, Perak, the defendant also has a business address in Graha Maju Bangunan PKNM, Tingkat 10 Lot 1A, Jalan Graha Maju, Melaka as evidenced in the result of official search in the Companies Commission of Malaysia, and that although the goods ordered by the defendant were delivered by the plaintiff in Melaka to Chemor, Perak, the defendant's orders to the plaintiff for the goods were made by the defendant's office in Melaka.

Submissions

Mr. Roger Lo Ming, learned counsel for the plaintiff, submitted that under para. 2(1)(a) to (e) of the Third Schedule to the Subordinate Courts Act 1948 ("para 2(1)(a) to (e)"), the Melaka Sessions Court has the jurisdiction to hear and determine the action herein and cited *Malacca Securities Sdn Bhd v. Loke Yu* [1998] 3 CLJ 22 in support.

He also relied on O. 47 of the Subordinate Courts Rules 1980; *American Express Bank Ltd v. Mohamed Toufic Al-Ozeir & Anor* [1995] 1 CLJ 273 SC; *Spiliada Maritime Corp v. Cansulex Ltd The Spiliada* [1987] AC 460 HL; and *RHB Bank. Bhd v. Kawood Sdn Bhd & Ors And Another Suit* [2002] 2 CLJ 387, to support the contention that the Melaka Sessions Court is the more appropriate forum.

The defendant through learned counsel Mr. JS Lim contended that the Melaka Sessions Court does not have the jurisdiction to hear and determine this action as the cause of action arose in Chemor, Perak where the goods were ordered from and delivered to, while the demands for payment and payments were all made in Chemor to the plaintiff in Melaka and support was sought in s. 59 of the Subordinate Courts Act 1948; *Tung Lian Enterprise v. Poly Trading Company* [1993] 4 CLJ 189; *Cita Marine Sdn Bhd v. Progressive Insurance Bhd & Ors* [2001] 6 CLJ 506; *Taman Rimba (Mentakab) Sdn Bhd v. Sin Jew Poh Tractor Works* [2002] 5 MLJ 321 HC; *Megarina Sdn Bhd v. Enersafe Sdn Bhd* [2002] 5 CLJ 478; s. 99A, para 2(1) and para 3 of the Third Schedule to the Subordinate Courts Act 1948.

He added that *Malacca Securities, supra,* does not apply, being distinguishable on the facts, as it was not based on goods sold and delivered, but on sale and purchase of shares.

Relying on *Yap Thiam Choy v. Sykt Pembenaan Fajar Baru (Rembau) Sdn Bhd* [2000] 4 CLJ 296; *Rashidah bte Mohammad v. Mayban Finance Bhd* [2003] 2 CLJ 542; *Amanah Finance Malaysia Berhad v. Aura Vista Sdn Bhd & Ors* [2000] 5 CLJ 229; he argued that the plaintiff's address in Melaka is not a factor to consider in determining the appropriate forum.

Decision Of The Court

Civil Jurisdiction Of Melaka Sessions Court

Section 59(2) of the Subordinate Courts Act 1948, where relevant, provides as follows:

> (2) Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil ... cause or matter arising within the local limits of jurisdiction assigned to it under this section, ...

A reference hereinafter to a section is a reference to that section in the Subordinate Courts Act 1948, unless otherwise stated.

That being the case, the Melaka Sessions Court shall have jurisdiction to hear and determine any civil cause or matter within the local limits of jurisdiction assigned to it ie, the entire state of Melaka (High Court Practice Direction No. 2 of 1993 effective from 1 April 1993).

Section 99A confers upon, *inter alia*, every sessions court further powers and jurisdiction set out in the Third Schedule thereto, and this is in amplification and not in derogation of the powers conferred by the Act or inherent in any court, and without prejudice to the generality of any such powers. The relevant para. is para 2(1) which provides as follows:

> 2. Stay of proceedings.
>
> (1) Power to stay proceedings unless they have been instituted in the District in which:
>
> (a) the cause of action arose, or
>
> (b) the defendant resides or has his place of business, or
>
> (c) one of several defendants resides or has his place of business, or
>
> (d) the facts on which the proceedings are based exist or are alleged to have occurred, or
>
> (e) for other reasons it is desirable in the interests of justice that the proceedings should be had.

Although the title to para 2(1) refers to "stay of proceedings", the content relates to the instituting of proceedings in the district in which any of the conditions is fulfilled.

The principles governing the construction of para 2(1) may be summarized as follows:

(1) A liberal, as opposed to a strict, rigid and dogmatic, approach should be adopted, as it is not confined to the power to stay proceedings: per Abdul Malik Ishak JC (now J) in *Tung Liang Enterprise, supra.*

(2) The conditions enumerated in para 2(1)(a) to (e) should be read disjunctively as the word "or" is stated after every condition stipulated therein.

(3) A party instituting an action in any particular court may do so if his case falls within any one of the conditions in para. 2(1)(a) to (e). See the judgments of VT Singham J in *Yap Thiam Choy supra*; Nik Hashim J (now JCA) in *Megarina, supra* at pp. 480e and 481a; Augustine Paul J (now JCA) in *Malacca Securities, supra,* in relation to s. 23(1)(a) to (d) of the Courts of Judicature Act 1964 ("s. 23(1)(a) to (d)") in which (a) to (b) are substantially similar to para 2(1)(a) to (c).

I shall now consider whether the plaintiff's instituting of the civil action in the Melaka Sessions Court has satisfied any one of the conditions prescribed in para 2(1)(a) to (e). On the allegations of facts as deposed to in the respective affidavits of the parties herein, it is necessary for me to consider para 2(1)(a) or (b) only.

District In Which The Cause Of Action Arose

This condition prescribed in para. 2(1)(a) is substantially in *pari materia* with s. 23(1)(a) of the Courts of Judicature Act 1964 which in turn was considered in *Malacca Securities, supra,* by Augustine Paul J (now JCA) who held, *inter alia,* as follows:

> With regard to accrual of a cause of action in contract cases, it is deemed to have occurred at the place where the breach took place. In a contract for the payment of money, the breach occurs when there is a failure to pay the sum promised. This is logical as the meaning of 'cause of action' is the act on the part of the defendant which gives the plaintiff his cause of complaint. The failure to pay will be the cause of the complaint. The breach will have to be the place where the payment is to be made and the cause of action will therefore accrue in that place. Where there is no agreement as to the place where the payment should be made, then the payment should be made at the place where the plaintiff lives.

I agree with and apply the dictum of the learned judge who referred to and followed *Cuban Atlantic Sugar Sales Corp v. Compania De Vapores San Elefterio Limitada* [1960] 1 All ER 141 per Lord Hodson; *Jackson v. Spittall* [1870] LR 5 CP 542; *Bank Bumiputra Malaysia Bhd v. Melewar Holdings Sdn Bhd & Ors* [1990] 1 CLJ 1246; [1990] 1 CLJ (Rep) 654; *Northey Stone Co v. Gidney* [1894] 1 QB 99 per Charles. (See also *Cita Marine, supra,* at p. 511 h-i, per Sulaiman Daud JC (now J)).

Since the allegations of fact deposed to in the affidavits filed herein reveal that the payments have been made by the defendant in Chemor to the plaintiff in Melaka for various prior business dealings between them, I have no doubt and no hesitation in holding that the non payment of the sum claimed by the plaintiff herein has given rise to the alleged breach in Melaka which in turn gave the plaintiff the cause of complaint in Melaka. I therefore hold that the cause of action arose in Melaka and am satisfied that the plaintiff has fulfilled para 2(1)(a) above.

Defendant's Place Of Business

This condition contained in para 2(1)(b) poses little or no problem at all. The defendant's address in Chemor, Perak is one of the places of the defendant's business, but the official search of the defendant's corporate profile in the Companies Commission of Malaysia clearly and truly shows that the defendant also has a place of business in Melaka. The short answer to the contention for the defendant on this issue is that it is completely devoid of merits, and that the plaintiff has satisfied para 2(1)(b).

Consideration Of Defendant's Authorities

In order to do justice to the authorities cited for the defendant, I shall now deal with them so as to determine the merits of the defendant's contention.

In *Tung Lian Enterprise, supra,* a civil action was instituted in Taiping, Perak in respect of goods sold and delivered in Kuala Lumpur. The defendant's application to transfer the action to Kuala Lumpur was dismissed by the Taiping Sessions Court ("the trial court") which held that under para 2(1), the trial court merely has jurisdiction to stay proceedings but not to transfer the action to Kuala Lumpur. On appeal, Abdul Malik Ishak JC (now J) was of the view that the trial court has occasioned a manifest injustice which cannot be allowed to remain uncorrected, and that a liberal approach should be adopted in construing para 2(1), instead of adopting or resorting to a strict, rigid and dogmatic approach as was done by the trial court. In the circumstances, his Lordship allowed the appeal

and ordered the action to be transferred to Kuala Lumpur. The entire judgment of his Lordship must be seen in that light, which is not supportive of the contention for the defendant.

In *Yap Thiam Choy, supra*, the plaintiff's address was in Temerloh while the defendant's address was in Petaling Jaya. The plaintiff commenced an action in Temerloh Sessions Court against the defendant for failing to settle the payment for the construction of a college in Besut, Trengganu. The defendant filed a counterclaim against the plaintiff and thereafter, an application for leave to transfer the proceedings from Temerloh Sessions Court to the Petaling Jaya Sessions Court. VT Singham J held, *inter alia*, that the defendant has satisfied para 2(1)(b) in relation to the defendant's address being in Petaling Jaya, in which case the action should be heard.

In my view, *Yap Thiam Choy, supra*, miliates against the defendant in the appeal before me as the action herein should be heard and determined in the place where the defendant resides or his place of business ie, Petaling Jaya in *Yap Thiam Choy, supra*, and in the instant case, in Jalan Graha Maju Melaka, in which case the appropriate forum is the Melaka Sessions Court.

Rashidah bte Mohammad, supra, Amanah Finance, supra, Taman Rimba, supra do not concern the construction of para 2(1)(a) to (e) and so is of no assistance to the defendant's submission.

In *Citra Marine, supra*, the defendants ran an insurance business from their headquarters situated in Kuala Lumpur, and the first defendant has a place of business in Kota Kinabalu and Kuching. In construing s. 23(1)(b) of the Courts of Judicature Act 1964, Sulaiman Daud JC (now J) held, *inter alia*, that the High Court of Sabah and Sarawak would also have jurisdiction in respect of the action filed by the plaintiff in Miri. Again, this authority has rebutted the defendant's contention.

The business address of the defendant in *Megarina, supra*, was at No. 743, Jalan Besar, Kg. Cacar Batu, 23100 Paka, Dungun, Trengganu and the plaintiff had filed a writ and statement of claim against the defendant in the Trengganu High Court allegedly for goods sold and delivered. Nik Hashim J (now JCA) in construing s. 23(1)(b) of the Courts of Judicature Act 1964 held that the High Court in Trengganu has the jurisdiction to hear the plaintiff's action. Hence, the judgment runs against the defendant's stand.

Conclusion

On the foregoing grounds, I hold that the trial court has erred in the aforesaid decision. I therefore allow this appeal with costs here and below, set aside the said order of the trial court and order that this action be heard and determined in the Melaka Sessions Court.